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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/728,591	12/01/2000	Dinesh Kashinath Anvekar	LOTS/P00006	4494

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EXAMINER

CHARLES, DEBRA F

ART UNIT	PAPER NUMBER
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3628

DATE MAILED: 04/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/728,591

Applicant(s)

ANVEKAR ET AL.

Examiner

Debra F. Charles

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3/Dec. 1, 2000</u> . | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-21 are rejected under 35 U.S.C. 101 because the bodies of the claims do not recite technology, i.e. computer implementation or any other technology in a non-trivial manner. *In re Toma*, 197 USPQ 852 (CCPA 1978). *Ex parte Bowman* 61 USPQ2D 1669.

For a claim to be statutory under 35 USC 101 the following two conditions must be met:

- 1) The claimed invention must produce a "useful, concrete, tangible result" (*In re Alappat*, 31USPQ2d 1545, 1558 (Fed. Cir. 1994) and *State Street vs. Financial Signature Group Inc.*, 47 USPQ2d 1596' 1601-02 (Fed Cir. 1998));

AND

- 2) The claimed invention must utilize technology in a non-trivial manner (*Ex parte Bowman*, 61 USPQ2d 1665, 1671 (Bd. Pat. Pat. App. & Inter. 2001)).

As to the technology requirement, note MPEP 2106 IV B 2(b). Also note *In re Waldbaum*, 173USPQ 430 (CCPA 1972) which teaches “useful arts” is synonymous with “technological arts”. In *Musgrave*, 167USPQ 280 (CCPA 1970), *In re Johnston*, 183USPQ 172 (CCPA 1974), and *In re Toma*, 197USPQ 852 (CCPA 1978), all teach a technological requirement.

In *State Street*, “in the technological arts” was never an issue. The invention in the body of the claim must recite technology. If the invention in the body of the claim is not tied to technological art, environment, or machine, the claim is not statutory. *Ex parte Bowman* 61USPQ2d 1665, 1671 (BD. Pat. App. & Inter.2001)(Unpublished).

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1,2,3,10,11,12,13,14,15,16,17,18, and 22-27 are rejected under 35 U.S.C. 102(e) as being anticipated by Crosskey et al.(U.S.PAT. 6035281A).

Re claims 1 and 22: Crosskey et al. disclose a settlement method and computer readable medium having computer executable instructions identifying each of a plurality of service providers operating to provide a service to a user in exchange for a fee debited from an account associated with said user(col. 2, lines 40-67, col. 10, lines 15-65, col. 12, lines 5-20, i.e. "charge");

apportioning said fee to said identified service providers(col. 3, lines 25-40, col. 4, lines 50-67, col. 11, lines 55-65);

and

crediting respective service provider accounts with respective portions of said fee(col. 2, lines 40-51, col. 10, lines 10-55).

Re claim 2: Crosskey et al. disclose said step of apportioning is adapted in response to changes in said provided service(col. 3, lines 25-40).

Re claim 3: Crosskey et al. disclose said service comprises a telecommunications service supported by a plurality of service providers(Abstract, col. 9, lines 15-29).

Re claim 6: Crosskey et al. disclose(s) said service comprises a video-on demand (VOD) service(col. 3, lines 1-15, col. 5, lines 1-15).

Re claim 7: Crosskey et al. disclose(s) said service includes services associated with content request and services associated with content delivery(col. 4, lines 45-67, col. 5, lines 1-15).

Re claim 10: Crosskey et al. disclose portions of said fee are debited from respective accounts associated with more than one user(col. 12, lines 5-25).

Re claim 11: Crosskey et al. disclose said service is provided to a plurality of users, and wherein said service fee is allocated among said plurality of users according to the proportional cost of providing said service to each user(Abstract, col.7, lines 1-15).

Re claim 12: Crosskey et al. disclose said service is provided to a plurality of users, and wherein said service fee is allocated among said plurality of users according to a least cost determination based on service level agreements between at least one of said users and said service providers(col. 11, lines 25-35).

Re claim 13: Crosskey et al. disclose at least one of said plurality of users

does not contribute to said service fee(col. 9, lines 1-10,col. 11, lines 10-50).

Re claim 14: Crosskey et al. disclose(s) at least one of said service providers is selected according to a service level agreement (SLA) between said at least one service provider and said user(Abstract, col. 3, lines 10-40,col. 6, lines 35-60).

Re claim 15: Crosskey et al. disclose said step of apportioning comprises the steps of:

measuring services provided to said user by said service providers; and

determining, for each of said measured services, a portion of said fee associated with said measured services(col. 5, lines 45-60, col. 6, lines 35-55,col. 7, lines 5-15, col. 9, lines 1-55, col. 11, lines 35-65).

Re claim 16: Crosskey et al. disclose selecting each of said plurality of service providers to provide said service to said user(col. 12, lines 25-40).

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Re claim 17: Crosskey et al. disclose(s) those service providers having service level agreements with said user are selected to provide respective service portions(col. 11, lines 5-40).

Re claim 18: Crosskey et al. disclose(s) those service providers operating together to provide a lowest total cost for said service are selected(col. 11, lines 5-35).

Re claim 23: Crosskey et al. disclose(s) a system, comprising:

a service platform, for providing a service to a customer using a plurality of service providers(col. 2, lines 40-67, col. 10, lines 15-65, col. 12, lines 5-20, i.e. "charge");

a service measurement and settlement agent (SMSA),

for measuring portions of said provided service associated with respective service providers(col. 5, lines 45-60, col. 6, lines 35-55, col. 7, lines 5-15, col. 9, lines 1-55, col. 11, lines 35-65),

apportioning a fee to each of said service providers(col. 3, lines 25-40, col. 4, lines 50-67, col. 11, lines 55-65);

and crediting respective service provider accounts with respective portions of said fee(col. 2, lines 40-51, col. 10, lines 10-55).

Re claim 24: Crosskey et al. disclose(s) said SMSA operates to select service providers used to provide said service to said customer(col. 3, lines 25-40,col. 11,lines 5-40).

Re claim 25: Crosskey et al. disclose(s) said SMSA selects those service providers which together provide said service at a lowest cost to said customer(col. 11, lines 5-35).

Re claim 26: Crosskey et al. disclose(s) said SMSA selects service providers based upon payments made to said SMSA(col. 4, lines 45-67).

Re claim 27: Crosskey et al. disclose(s)said SMSA selects service providers based upon service level agreements between said customer and said selected service providers(col. 3, lines 5-40,col. 4, lines 45-67, col. 11,lines 5-40).

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crosskey et al. as applied to claim 1 and in view of Nadeau(U.S. PAT. 6240449A).

Re claims 4 and 5: Crosskey et al. disclose(s) the claimed invention except said service includes a bridge service provided by a telecom platform service provider; said service includes a bridge service provided by an internet service provider. However, in Abstract, col. 12, lines 10-20, col. 17, lines 15-25 thereof, Nadeau disclose(s) a bridge service system for telecommunications and internet networks. It would be obvious to one of ordinary skill in the art to modify the invention of Crosskey et al. based on the teachings of Nadeau. The motivation to combine these references is to increase the flexibility of the service providers and provide more flexible service to the customer.

6. Claims 8,9,19,20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crosskey et al. as applied to claim 1 and in view of Littlejohn(U.S. PAT. 6553353B1).

Re claim 8 and 9: Crosskey et al. disclose(s) the claimed invention except said service comprises one of the delivery of electricity, natural gas and water; and delivery service includes services provided by source and distribution service providers. However, in the Abstract, col. 2, lines 50-60, col. 4, lines 50-65 thereof, Littlejohn disclose(s) distribution providers of electricity, natural gas and water as well as delivery service of these utilities. It would be obvious to one of ordinary skill in the art to modify the invention of Crosskey et al. based on the teachings of Littlejohn. The motivation to combine these references is to enhance the efficiency of utility service delivery.

Re claims 19, 20 and 21: Crosskey et al. disclose(s) the claimed invention except monitoring said services provided to said user; determining whether a value of said user account is sufficient to pay a presently accrued fee; in the case of said account value being insufficient, terminating said service to said user; prior to said service termination, offering said user an opportunity to provide additional value such that said provided service may be continued; and monitoring said services provided to said user; determining whether a value of said user account is sufficient to pay a presently accrued fee; and in the case of said account value being insufficient, retrieving value from an alternate account associated with said user. However, in the Abstract, col. 2,

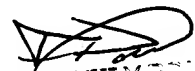
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lines 50-60,col. 3, lines 5-50, col. 4, lines 50-65 thereof, Littlejohn disclose(s) shutting off power when there is insufficient funds available to continue power, and alternative payment methods. It would be obvious to one of ordinary skill in the art to modify the invention of Crosskey et al. based on the teachings of Littlejohn. The motivation to combine these references is to enhance the efficiency of utility service delivery.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Debra F. Charles whose telephone number is (703) 305-4718. The examiner can normally be reached on 9-5 Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frantzy Poinvil can be reached on (703) 305-9779. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


FRANTZY POINVIL
PATENT EXAMINER
Art 3628

Debra F. Charles

Examiner

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